

## BILL ANALYSIS

Senate Research Center

S.B. 1477  
By: Armbrister  
Natural Resources  
6-15-93  
Enrolled

### BACKGROUND

The Edwards Aquifer covers an area of South Central Texas extending 180 miles, from Kinney County in the west and Hays County in the east. The aquifer is a distinct geological formation consisting of porous, water-bearing limestone formations confined between layers of relatively impermeable rock. Unlike sand-bearing aquifers, the porous limestone allows for a higher recharge capacity. Groundwater also moves relatively quickly compared to other aquifers. Edwards Aquifer wells produce much more water than comparable wells in other aquifers. Operating as a single water-bearing system, any recharge, pumping or spring discharge affects water levels across the entire aquifer.

This unique formation is the sole source of water for more than 1.5 million Texans, who depend on it for agricultural, municipal, industrial, and recreational use. Reliance on the Edwards Aquifer has increased dramatically over the past 40 years and will continue beyond the aquifer's natural recharge in the future if unlimited pumping persists. Pumping from Edwards wells currently averages 500,000 acre feet per year and is growing as demand for water increases. The Texas Water Development Board projects that the water demand for the region will exceed 750,000 acre-feet per year by 2040. The average annual recharge of the Edwards Aquifer is 651,000 acre-feet.

Under current Texas groundwater law, the rule of capture provides that the landowner has the right to take for use or sale all the water the owner can capture from below the owner's land. The rule of capture was recently challenged in a federal lawsuit to protect endangered species existing within the San Marcos and Comal Springs. Judge Bunton ruled that endangered species must be protected and ordered U.S. Fish and Wildlife Services to determine the minimum springflows necessary to sustain these species. Regional interests were given until May 31, 1993, to develop a regional plan that would manage the aquifer and protect endangered species. The federal court has indicated that it will intervene if a satisfactory regional plan is not developed by this deadline.

### PURPOSE

As enrolled, S.B. 1477 provides for the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer; grants the power of eminent domain; authorizes the issuance of bonds; provides civil and criminal penalties; and validates the creation of the Uvalde County Underground Water Conservation District.

### RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the Edwards Aquifer Authority under SECTION 1.09(f), SECTION 1.11(a), SECTION 1.16(f), SECTION 1.34(b), and SECTION 1.36(b) of this bill.

### SECTION BY SECTION ANALYSIS

**SECTION 1.01. FINDINGS AND DECLARATION OF POLICY.** Sets forth the findings and declaration of the legislature.

**SECTION 1.02. CREATION.** (a) Creates a conservation and reclamation district, to be known as the Edwards Aquifer Authority (authority), in all or part of Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina, and Uvalde counties. Provides that a confirmation election is not

necessary. Provides that the authority is a governmental agency and a body politic and corporate.

(b) Provides that the authority is created under and is essential to accomplish the purposes of Article XVI, Section 59, Texas Constitution.

**SECTION 1.03. DEFINITIONS.** Defines "aquifer," "augmentation," "authority," "beneficial use," "board," "commission," "conservation," "diversion," "domestic or livestock use," "existing user," "industrial use," "irrigation use," "livestock," "municipal use," "order," "person," "pollution," "recharge," "reuse," "underground water," "waste," "well," "well J-17," "well J-27," and "withdrawal."

**SECTION 1.04. BOUNDARIES.** Sets forth the area that the territory of the authority contains.

**SECTION 1.05. FINDINGS RELATING TO BOUNDARIES.** Provides that the boundaries and field notes of the authority form a closure. Provides that a mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district or the legality or operation of the district or its governing body.

**SECTION 1.06. FINDING OF BENEFIT.** (a) Sets forth the findings of the legislature regarding the hydrologic interrelationship of the Guadalupe, San Antonio, San Marcos, Comal, Frio, and Nueces river basins and the Edwards Aquifer (aquifer) and the benefits to the welfare of this state to provide for the management mechanisms consistent with our legal system and appropriate to the aquifer system.

(b) Sets forth the findings of the legislature regarding the benefit to land and property included within the boundaries of the authority.

**SECTION 1.07. OWNERSHIP OF UNDERGROUND WATER.** Provides that the ownership and rights of the owner of land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in underground water and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized. Prohibits action taken pursuant to this Act from being construed as depriving or divesting the owner or the owner's lessees and assigns of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the authority or a district exercising the powers provided by Chapter 52, Water Code. Sets forth the legislature's intentions regarding compensation for the taking of private property.

**SECTION 1.08. GENERAL POWERS.** (a) Sets forth the powers of the authority.

(b) Provides that the authority's powers regarding underground water apply only to underground water within or withdrawn from the aquifer. Provides that this subsection is not intended to allow the authority to regulate surface water.

(c) Requires the authority and local governments with certain pollution control powers, in order to prevent pollution and enforce water quality standards in the counties included within the authority's boundaries and within a specific buffer zone to apply pollution control regulations equally and uniformly throughout the area within the counties and the buffer zone. Provides that the buffer zone does not include the territory within a water management district created by the 71st Legislature.

**SECTION 1.09. BOARD OF DIRECTORS.** (a) Provides that the authority is governed by a board of nine directors.

(b) Sets forth the composition of the board.

(c) Requires the Commissioners Court of Bexar County and the governing body of the City of San Antonio to make appointments under Subsection (b) of this section that accurately reflect the ethnic composition of the population of Bexar County.

(d) Requires the initial directors of the board to draw lots to determine their terms. Provides that four initial directors serve terms that expire June 1, 1995. Provides that five initial directors serve terms that expire June 1, 1997. Requires subsequent directors to be appointed to serve staggered four-year terms, the appropriate number of which expire June 1 of each odd-numbered year.

(e) Requires the members to select one member to serve as presiding officer at the initial meeting of the board. Provides that the presiding officer serves a term set by rule of the board not to exceed four years. Provides that an act of the board is not valid unless adopted by the affirmative vote of a majority of the members of the board.

(f) Provides that a board member receives no compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the member's duties.

(g) Requires a board member to hold office until a successor has been selected and approved and has qualified by taking the oath of office.

(h) Requires the governing body that appointed a vacating member to appoint another person having the same qualifications required of the vacating member to serve the unexpired portion of the vacating member's term.

**SECTION 1.10. SOUTH CENTRAL TEXAS WATER ADVISORY COMMITTEE.** (a) Requires the South Central Texas Water Advisory Committee (advisory committee) to advise the board on downstream water rights and issues. Sets forth the composition of the advisory committee.

(b) Requires a member to be a resident or qualified voter of or engaged in business in a county all or part of which is included in the member's area of representation.

(c) Provides that the reimbursement of an advisory committee member for expenses is on the same terms as the reimbursement of board members. Provides that an advisory committee member is not entitled to compensation.

(d) Provides that an advisory committee member holds office until a successor is appointed.

(e) Requires the authority to send to each advisory committee member all communications of the authority that are extended to board members and authorizes the authority to participate in board meetings to represent downstream water supply concerns and assist in solutions to those concerns. Prohibits advisory committee members from voting on a board decision.

(f) Authorizes the advisory committee to request the board to reconsider any board action that is considered prejudicial to downstream water interests. Authorizes the advisory committee, if the board review does not result in a resolution satisfactory to the advisory committee, to request the commission to review the action. Requires the commission to review the action and authorizes the commission to make a recommendation to the board. Requires the board to reverse itself if the board determines that the board's action is contrary to an action of the commissioner affecting downstream interests.

(g) Requires the advisory committee to meet to organize and elect a presiding officer.

(h) Requires the presiding officer of the advisory committee to submit a report asserting the effectiveness of the authority to the commission and the authority by March 31 of each even-numbered year. Requires the report to assess the effect on downstream water rights of the management of the aquifer. Requires the authority to consider the report in managing the authority's affairs.

(i) Sets forth the advisory committee's duties.

**SECTION 1.11. GENERAL POWERS AND DUTIES OF THE BOARD AND AUTHORITY.**

(a) Requires the board to adopt rules necessary to carry out the authority's powers and duties under this article, including rules governing procedures of the board and authority.

(b) Requires the authority to ensure compliance with permitting, metering, and reporting requirements and to regulate permits.

(c) Authorizes the authority to issue orders to enforce this article or its rules.

(d) Authorizes the authority to take certain actions.

(e) Requires the authority to make a good faith effort to award to minority-owned and women-owned businesses contracts issued under the powers and duties granted under this section in the amount of 20 percent of the total amount of those contracts. Requires the authority to file biennially with the governor and each house of the legislature a written report containing certain information. Defines "minority-owned business," "minority group," and "women-owned business."

(f) Authorizes the authority to contract with a person who uses water from the aquifer for the authority or that person to construct, operate, own, finance, and maintain water supply facilities. Prohibits management or special fees from being used for purchasing or operating these facilities. Defines "water supply facility."

(g) Provides that the authority has the power of eminent domain. Prohibits the authority from acquiring rights to aquifer water by power of eminent domain.

(h) Provides that the authority is subject to the open meeting law, the open records law, and the Administrative Procedure and Texas Register Act.

**SECTION 1.12. SUNSET COMMISSION REVIEW.** (a) Provides that the board is subject to review under the Texas Sunset Act but may not be abolished under that Act. Requires the review to be conducted as if the board were scheduled to be abolished September 1, 2005.

(b) Provides that unless members are continued in office after their review, their membership expires September 1, 2005.

(c) Requires a new board of directors to be appointed as provided by this article, when the membership of the board of directors expires under Subsection (b), with each new member serving for the unexpired term of the member's predecessor. Provides that a members whose membership has expired under Subsection (b) is not eligible for reappointment under this subsection.

**SECTION 1.13. REUSE AUTHORIZED.** Requires any regulation of the withdrawal of water from the aquifer to allow for credit to be given for certified reuse of the water. Requires the authority or a local underground water conservation district to certify certain items for regulatory credit.

**SECTION 1.14. WITHDRAWALS.** (a) Requires authorizations to withdraw water from the aquifer and all authorizations and rights to make a withdrawal under this Act to be limited in accordance with this section to certain criteria.

(b) Prohibits the total amount of permitted withdrawals from the aquifer from exceeding 450,000 acre-feet of water for each calendar year, except as provided by Subsections (d), (f), and (h) and Section 1.27 of this article, for the period ending December 31, 2007.

(c) Prohibits the total amount of permitted withdrawals from the aquifer from exceeding 400,000 acre-feet of water for each calendar year, except as provided by Subsections (d), (f), and (h) and Section 1.27 of this article, for the period beginning January 1, 2008.

(d) Authorizes the authority, in consultation with appropriate state and federal agencies,

to review and to increase the maximum amount of withdrawals provided by this section and set a different maximum amount of withdrawals, if, through studies and, implementation of water management strategies to optimize the yield of the aquifer, including springflow augmentation, diversions downstream of springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, the authority determines that additional supplies are available from the aquifer or that the available water supply is reduced.

(e) Prohibits the authority from allowing withdrawals from the aquifer through wells drilled after June 1, 1993, except additional water as provided by Subsection (d) and then on an interruptible basis.

(f) Authorizes the authority to authorize withdrawal from the San Antonio pool, on an uninterruptible basis, of permitted amounts, if the level of the aquifer is equal to or greater than 650 feet above the mean sea level as measured at well J-17. Authorizes the authority to authorize withdrawal from the Uvalde pool, on an interruptible basis, of permitted amounts, if the level of the aquifer is equal to or greater than 845 feet at well J-27. Requires the authority to limit the additional withdrawals to ensure that springflows are not affected during critical drought conditions.

(g) Authorizes the authority, by rule, to define other pools within the aquifer, in accordance with hydrogeologic research, and to establish index wells for any pool to monitor the level of the aquifer to aid the regulation of withdrawals from the pools.

(h) Requires the authority, to accomplish the purposes of this article, by June 1, 1994, to implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum spring flows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law. Authorizes the authority from time to time as appropriate to revise the practices, procedures, and methods. Requires the authority to require phased reductions in the amount of water that may be used or withdrawn by existing users or categories of other users or implementation of alternative management practices, procedures, and methods.

**SECTION 1.15. PERMIT REQUIRED.** (a) Requires the authority to manage withdrawals from the aquifer and to manage all withdrawal points from the aquifer as provided by this Act.

(b) Prohibits a person from withdrawing water from the aquifer or beginning construction of a well or other works designated for the withdrawal of water from the aquifer without obtaining a permit from the authority, except as provided by Sections 1.17 and 1.33 of this article.

(c) Authorizes the authority to issue regular permits, term permits, and emergency permits.

(d) Requires each permit to specify the maximum rate and total volume of water that the water user may withdraw in a calendar year.

**SECTION 1.16. DECLARATIONS OF HISTORICAL USE; INITIAL REGULAR PERMITS.**

(a) Authorizes an existing user to apply for an initial regular permit by filing a declaration of historical use of underground water withdrawn from the aquifer during the historical period from June 1, 1982 through May 31, 1993.

(b) Requires an existing user's declaration of historical use to be filed on or before March 1, 1994, on a form prescribed by the board. Requires an applicant for the permit to timely pay all application fees required by the board. Requires an owner for a well used for irrigation to include additional documentation of the number of acres irrigated during the historical period provided by Subsection (a).

(c) Provides that an owner of a well from which the water will be used exclusively for

domestic use or watering livestock and that is exempt under Section 1.34 is not required to file a declaration of historical use.

(d) Requires the board to grant an initial regular permit to an existing user who files a declaration and pays the required fees, and establishes by convincing evidence, beneficial use of underground water from the aquifer.

(e) Requires the board, to the extent water is available for permitting, to issue the existing user a permit for withdrawal of an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period. Requires the authority, if a water user does not have historical use for a full year, to issue a permit for withdrawal based in an amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year. Requires the authority, if the total amount of water is determined to have been beneficially used without waste exceeds the amount of water available for permitting, to adjust the amount of water authorized for withdrawal under the permits proportionately to meet the amount available for permitting. Requires an existing irrigation user to receive a permit for not less than two acre-feet for each year for each acre of land the user irrigated during the historical period to the extent water is available for permitting. Requires an existing user who has operated a well for three or more years during the historical period to receive a permit for at least the average amount of water withdrawn annually during the historical period to the extent water is available for permitting.

(f) Requires the board to consider, by rule, the equitable treatment of a person whose historic use has been affected by a requirement of or participation in a federal program.

(g) Requires the authority to issue an initial regular permit without a term and provides that an initial regular permit remains in effect until the permit is abandoned, cancelled, or retired.

(h) Requires the board to notify each permit holder that the permit is subject to limitations as provided by this article.

**SECTION 1.17. INTERIM AUTHORIZATION.** (a) Authorizes a person who, on the effective date of this article, owns a producing well that withdraws water from the aquifer to continue to withdraw and beneficially use water without waste until final action on permits by the authority under certain conditions.

(b) Prohibits use under interim authorization from exceeding on an annual basis the historical, maximum beneficial use of water without waste during any one calendar year as evidenced by the person's declaration of historical use, unless that amount is otherwise determined by the authority.

(c) Subjects use under this section to the authority's comprehensive management plan and rules adopted by the authority.

(d) Provides that interim authorization for a well under this section ends on entry of a final and appealable order by the authority acting on the application for permit for a well, or March 1, 1994, if the well owner has not filed a declaration of historical use.

**SECTION 1.18. ADDITIONAL REGULAR PERMITS.** (a) Authorizes the authority, to the extent water is available for permitting after the issuance of permits to existing users, to issue additional regular permits, subject to limits on the total amount of permitted withdrawals determined under Section 1.15.

(b) Prohibits the authority from considering or taking action on an application relating to a proposed or existing well for which there is no evidence of actual beneficial use before June 1, 1993, until a final determination has been made on all initial regular permit applications submitted on or before the initial application date of March 1, 1994.

**SECTION 1.19. TERM PERMITS.** (a) Authorizes the authority to issue interruptible term permits for withdrawal for any period the authority considers feasible, but prohibits the authority from issuing a term permit for a period of more than 10 years.

(b) Prohibits a holder of a term permit from withdrawing water from the San Antonio pool of the aquifer unless the level of the aquifer is higher than 665 feet above sea level.

(c) Prohibits the holder of a term permit from withdrawing water from the Uvalde pool of the aquifer unless the level of the aquifer is higher than 865 feet above sea level.

**SECTION 1.20. EMERGENCY PERMITS.** (a) Authorizes emergency permits to be issued only to prevent the loss of life or to prevent severe, imminent threats to the public health or safety.

(b) Prohibits the term of an emergency permit from exceeding 30 days, unless renewed.

(c) Authorizes the board to renew an emergency permit.

(d) Authorizes the holder of an emergency permit to withdraw water from the aquifer without regard to its effect on other permit holders.

**SECTION 1.21. PERMIT RETIREMENT.** (a) Requires the authority to prepare and implement a plan for reducing, by January 1, 2008, the maximum annual volume of water authorized to be withdrawn from the aquifer under regular permits to 400,000 acre-feet a year or the adjusted amount determined under Section 1.14(d).

(b) Requires the plan to be enforceable and to include water conservation and reuse measures, measures to retire water rights, and other water management measures designed to achieve the reduction levels or appropriate management of the resource.

(c) Requires the maximum authorized withdrawal of each regular permit, if on or after January 1, 2008, the overall volume of water authorized to be withdrawn from the aquifer under regular permits is greater than 400,000 acre-feet a year or greater than the adjusted amount determined under Section 1.14(d), to be immediately reduced by an equal percentage as is necessary to reduce overall maximum demand to 400,000 acre-feet a year or the adjusted amount, as appropriate. Authorizes the amount reduced to be restored as other appropriate measures are implemented that maintain overall demand at or below the appropriate amount.

**SECTION 1.22. ACQUISITION OF RIGHTS.** (a) Authorizes the authority to acquire permitted rights to use water from the aquifer for certain purposes.

(b) Authorizes the authority to acquire and hold permits or rights to appropriate surface water or groundwater from sources inside or outside the authority's boundaries.

(c) Provides that the authority's acquisition of permitted rights to use water from the aquifer is eligible for financial assistance from certain sources.

**SECTION 1.23. CONSERVATION AND REUSE PLANS.** (a) Requires the authority to require holders of regular permits and holders of term permits to submit water conservation plans and reuse plans for review and approval by the authority. Requires the board to require, by rule, a plan to be implemented after a reasonable time after the plan's approval.

(b) Requires the board to assist users in developing conservation or reuse plans.

(c) Requires the authority to prepare biennially and update enforceable and effective conservation and reuse plans as required by this article. Requires the authority to submit the plan to the legislature not later than January 1 of each odd-numbered year.

**SECTION 1.24. LOANS AND GRANTS.** (a) Provides that the authority is eligible as a lender district to receive loans from the Texas Water Development Board under the agricultural water

conservation bond program under Chapter 17J, Water Code.

(b) Authorizes the authority to apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this article.

(c) Authorizes the authority to issue grants or make loans to finance the purchase or installation of equipment or facilities. Authorizes the authority, if the authority issues a grant for a water conservation, reuse, or water management project, to require the beneficiary to transfer to the authority permitted rights to aquifer water equal to a portion of the water conserved or made available by the project.

**SECTION 1.25. COMPREHENSIVE MANAGEMENT PLAN.** (a) Requires the authority to develop, by September 1, 1995, and implement a comprehensive water management plan that includes conservation future supply, and demand management plans. Prohibits the authority from delegating the development of the plan under Section 1.42.

(b) Requires the authority, in conjunction with the advisory committee, the Texas Water Development Board and underground water conservation districts within the authority's boundaries, to develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the authority and reviewed annually by the appropriate state agencies and the Edwards Aquifer Legislative Oversight Committee. Requires the authority, advisory committee, Water Development Board, and districts, in developing the plan to thoroughly investigate all alternative technologies, investigate mechanisms for providing financial assistance for alternative supplies through the Water Development Board, and perform a cost-benefit analysis and an environmental analysis.

**SECTION 1.26. CRITICAL PERIOD MANAGEMENT PLAN.** Requires the authority to prepare and coordinate implementation of a plan for critical period management. Sets forth requirements for the mechanisms.

**SECTION 1.27. RESEARCH.** (a) Requires the authority to complete research on the technological feasibility of springflow enhancement and yield enhancement that, immediately before September 1, 1993, is being conducted by the Edwards Underground Water District.

(b) Authorizes the authority to conduct research to assist in the efficient management of the aquifer.

(c) Authorizes the authority to schedule demonstration projects for purposes of Subsection (b)(1).

(d) Authorizes the authority to contract with other persons to conduct research.

**SECTION 1.28. TAX; BONDS.** (a) Prohibits the authority from levying a property tax.

(b) Authorizes the authority to issue revenue bonds to finance the purchase of land or the purchase, construction, or installation of facilities or equipment. Prohibits the authority from allowing for any person to construct, acquire, or own facilities for transporting groundwater out of Uvalde County or Medina County.

(c) Subjects bonds issued by the authority to review and approval of the attorney general and the commission. Requires the attorney general, if the attorney general finds that the bonds have been authorized in accordance with law, to approve the bonds, and requires the comptroller to register the bonds.

(d) Authorizes the authority board to organize proceeds of the bonds into funds and accounts and to invest the proceeds as the authority board determines appropriate.

**SECTION 1.29. FEES.** (a) Requires the cost of reducing withdrawals or permit requirements to be borne: solely by users of the aquifer for reducing withdrawals from the level on the



effective date of this article to 450,000 acre-feet or the adjusted amount determined under Section 1.14(d) for the period ending December 31, 2007; and equally by aquifer users and downstream water rights holders for pumping reductions from 450,000 acre-feet a year, or the adjusted amount determined under Section 1.14(d) for the period ending December 31, 2007, to 400,000 acre-feet a year, or the adjusted amount determined under Section 1.14(d) for the period beginning January 1, 2008.

(b) Requires the authority to assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Authorizes each water district governed by Chapter 52, Water Code, that is within the authority's boundaries to contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. Authorizes the contract to provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. Prohibits the authority from collecting a total amount of fees and taxes that is more than reasonably necessary for the administration of the authority.

(c) Requires the authority to assess an equitable special fee based on permitted aquifer water rights necessary to meet the goals provided by Section 1.22. Requires the authority to set the equitable special fees on permitted aquifer users as a level sufficient to match the funds raised from the assessment of equitable special fees on downstream water rights holders.

(d) Requires the commission to assess equitable special fees on all downstream water rights holders in the Guadalupe River Basin to be used solely to finance the retirement of aquifer rights necessary to meet the goals provided by Section 1.21 of this article. Prohibits fees assessed under this section from exceeding one-half of the cost of permit retirements from the aquifer from 450,000 acre-feet a year, or the adjusted amount determined under Section 1.14(d) for the period ending December 31, 2007 to 400,000 acre-feet a year, or the amount determined under Section 1.14(d) for the period beginning January 1, 2008. Requires the authority to report to the commission the estimated cost of the retirements. Requires the amount of fees assessed to be determined in accordance with rules adopted by the commission for fees under the South Texas water master program with adjustments as necessary to ensure that fees are equitable between users. Requires a downstream water rights holder to pay fees assessed to the authority. Prohibits a fee from being assessed by the commission on contractual deliveries of water stored in Canyon Lake that may be diverted downstream of the San Marcos or Canyon Dam. Prohibits a person or entity making a contractual sale of water stored upstream of the Canyon Dam from establishing a systemwide rate that requires purchasers of upstream-stored water to pay the special fee assessed.

(e) Authorizes the authority, in developing an equitable fee structure, to establish different types of use. Requires the fees to be equitable between types of uses. Requires the fee rate for agricultural use to be based on the volume of water withdrawn and prohibits the fee rate from being more than 20 percent of the fee rate for municipal use. Requires the authority to assess the fees on the amount of water a permit holder is authorized to withdraw.

(f) Requires the authority to impose a permit application fee not to exceed \$25.

(g) Authorizes the authority to impose a registration application fee not to exceed \$10.

(h) Prohibits special fees collected under Subsection (c) or (d) from being used to finance a surface water supply reservoir project.

(i) Requires the authority to provide money as necessary, but not to exceed five percent of the money collected under Subsection (d), to finance the advisory committee's administrative expenses and programs authorized under this article.

**SECTION 1.30. RIVER DIVERSIONS.** (a) Authorizes the commission to issue to an applicant

a special permit to divert water from the Guadalupe River from a diversion point on the river downstream or the point where the river emerges as a spring.

(b) Requires a permit issued to a person to condition the diversion of water from the Guadalupe River on a limitation of withdrawals under the person's permit to withdraw water from the aquifer.

(c) Requires a permit issued under this section to provide that the permit holder may divert water from the Guadalupe River only if the diversion is made instead of a withdrawal from the aquifer to enhance yield from the aquifer, and the diversion does not impair senior water rights or vested riparian rights.

(d) Provides that a permit issued in accordance with this section is subordinate to permitted water rights for which applications were submitted before May 31, 1993, and vested riparian rights.

(e) Provides that Sections 11.028 and 11.033, Water Code, do not apply to a permit issued under this section.

**SECTION 1.31. MEASURING DEVICES.** (a) Requires the owner of a nonexempt well that withdraws water from the aquifer to install and maintain a measuring device approved by the authority designed to indicate the flow rate and cumulative amount of water withdrawn by that well. Authorizes this requirement to be waived by the authority on written request by a well owner to use an alternative method of determining the amount of water withdrawn.

(b) Provides that the authority is responsible for the costs of purchasing, installing, and maintaining measuring devices for an irrigation well in existence on September 1, 1993.

**SECTION 1.32. REPORTS.** Requires each holder of a permit to file with the authority a written report of water use for the preceding calendar year not later than March 1 of each year.

**SECTION 1.33. WELL METERING EXEMPTION.** (a) Exempts a well that produces 25,000 gallons or less of water per day for domestic or livestock use or for the open-range watering of livestock connected with farming, ranching, or dairy enterprises from permitting requirements.

(b) Requires exempt wells to register with the authority or with an underground water conservation district in which the well is located.

(c) Provides that a well within or serving a subdivision requiring platting does not qualify for exempt use.

**SECTION 1.34. TRANSFER OF RIGHTS.** (a) Requires water withdrawn from the aquifer to be used within the boundaries of the authority.

(b) Authorizes the authority to establish by rule a procedure by which a person who installs water conservation equipment may sell the water conserved.

(c) Authorizes a permit holder to sell permitted water rights, but prohibits the holder of a permit for irrigation use from selling more than 50 percent of the rights initially permitted. Requires the user's remaining irrigation water rights to be used in accordance with the original permit and to pass with transfer of the land as provided by rules of the board.

**SECTION 1.35. PROHIBITIONS.** (a) Prohibits a person from withdrawing water from the aquifer except as authorized by a permit issued by the authority or by this article.

(b) Prohibits a person holding a permit issued by the authority from violating the terms or conditions of the permit.

(c) Prohibits a person from wasting water withdrawn from the aquifer.

(d) Prohibits a person from polluting or contributing to the pollution of the aquifer.

(e) Prohibits a person from violating this article or a rule adopted under this article.

**SECTION 1.36. ENFORCEMENT.** (a) Authorizes the authority to enter orders to enforce the terms and conditions of permits, orders, or rules issued or adopted under this article.

(b) Requires the authority to provide, by rule, for the suspension of a permit of any class for a failure to pay a required fee or a violation of a permit condition or order of the authority or a rule adopted by the authority.

**SECTION 1.37. ADMINISTRATIVE PENALTY.** (a) Authorizes the authority to assess an administrative penalty against a person who violates this article or a rule adopted or permit or order issued in an amount of not less than \$100 or more than \$1,000 for each violation for each day of a continuing violation.

(b) Requires the authority to consider certain factors in determining the amount of the penalty.

(c) Authorizes the authority, if the authority determines that the person did commit a violation, to issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty be imposed, and the amount of the proposed penalty.

(d) Requires the authority to give written notice of the report to the person charged with committing the violation. Requires the notice to include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the occurrence of the violation, amount of penalty, or both.

(e) Authorizes the person, within a specific time frame, to give the authority written consent to the report or make a written request for an informal review.

(f) Requires the authority, if the person consents to the penalty or fails to timely request a review, to assess the penalty. Requires the authority to give the person written notice of its action. Requires the person to pay the penalty within a specific time frame.

(g) Requires the authority, if the person requests an informal review, to conduct the review. Requires the authority to give the person written notice of the results of the review.

(h) Authorizes the person, within a specific time frame, to make to the authority a written request for a hearing.

(i) Requires the authority to assess the penalty if a person who has been ordered to pay a penalty fails to timely request a formal hearing. Requires the authority to give written notice of its action. Requires the person to pay the penalty within a specific time frame.

(j) Requires the person, within a specific time frame, to pay the amount of the penalty, pay the penalty and file a petition for judicial review, or file a petition for judicial review without paying the penalty.

(k) Authorizes a person who acts under Subsection (j)(3) to stay the enforcement of the penalty by certain means, or to request the court to stay the enforcement of the penalty by other means.

(l) Authorizes the authority, if it receives a copy of an affidavit stating that the person is financially unable to pay the penalty, to file with the court a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit and to stay the enforcement of the penalty on finding that the alleged facts are true. Places the burden of proof on the person who files the affidavit to prove that the person is financially

unable to pay the penalty or give a bond.

(m) Authorizes the authority, if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the amount of the penalty.

(n) Provides that judicial review of the authority is instituted by filing a petition as provided by Section 19 of the Administrative Procedure and Texas Register Act, and is under the substantial evidence rule.

(o) Authorizes the court, if the court sustains the occurrence of the violation, to uphold or reduce the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court to order that no penalty is owed if the court does not sustain the occurrence of the violation.

(p) Requires the court to proceed under this section when the judgment becomes final. Requires the court, if the person paid the amount of the penalty and if that amount is reduced or not upheld by the court, to order that the appropriate amount plus accrued interest be remitted to the person. Provides that the rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires interest to be paid for the period the authority held the amount of the penalty. Requires the court, if the person gave a supersedeas bond and penalty is not upheld by the court, to order the release of the bond. Requires the court, if the person gave a supersedeas bond and if the amount of the penalty is reduced, to order the release of the bond after the person pays the amount.

(q) Requires a penalty collected under this section to be remitted to the authority.

(r) Provides that all proceedings under this section are subject to the Administrative Penalty and Texas Register Act.

**SECTION 1.38. INJUNCTION BY AUTHORITY.** Authorizes the authority to file a civil suit in a state district court for an injunction to enforce this article, or a rule adopted, or permit or order issued under this article. Authorizes the authority to recover reasonable attorney's fees in a suit under this section.

**SECTION 1.39. SUIT FOR MANDAMUS.** Authorizes the commission to file a civil suit for an order of mandamus against the authority to compel the authority to perform its duties or enforce this article against a violator. Authorizes the commission to recover attorney's fees from the authority in a suit under this section.

**SECTION 1.40. CIVIL PENALTY.** (a) Authorizes the commission or authority to file a civil action in a state district court for a civil penalty for a violation.

(b) Authorizes the commission or authority to recover a civil penalty of between \$100 and \$10,000 for each violation and each day of violation and attorney's fees.

(c) Requires a civil penalty or attorney's fees collected by the authority to be paid to the authority.

(d) Requires a civil penalty or attorney's fees collected by the commission to be deposited in the general revenue fund.

**SECTION 1.41. REPEALER; TRANSFERS; RULES.** (a) Repealer: Chapter 99, Article 8280-219, V.T.C.S. Abolishes the Edwards Underground Water District (district).

(b) Transfers certain files and records of the district to the authority on the effective date of this article.

(c) Transfers obligations of the district to the authority on the effective date of this Act.

(d) Transfers all unobligated and unexpended funds of the district to the authority on September 1, 1993.

(e) Provides that a rule adopted by the district before the effective date of this article remains in effect until amended or repealed by the authority.

(f) Requires the authority to be automatically substituted for the Edwards Underground Water District in any judicial or administrative proceeding to which, on the effective date of this Article, the district is a party.

**SECTION 1.42. EFFECT ON OTHER DISTRICTS.** (a) Authorizes an underground water conservation district other than the authority to manage and control water that is a part of the aquifer after the effective date of this article only as provided in this section. Provides that this article does not affect a water reclamation or conservation district that manages and controls only water from a resource other than the aquifer.

(b) Authorizes an underground water conservation district other than the authority to manage and control water that is a part of the aquifer to the extent that those management activities do not conflict with and are not duplicative of this article.

(c) Authorizes the board to delegate the powers and duties granted to it under this article. Requires the board to delegate all or part of its powers or duties to an underground water conservation district on the district's request under certain conditions.

(d) Authorizes the board to consider the district's past performance and experience in enforcing powers and duties delegated to it by the board. Authorizes the board to deny a request for delegation of powers or duties by a district if the district has previously had a delegation terminated under Subsection (e).

(e) Requires the authority, if the authority determines that a district has failed adequately to enforce or implement this section, to provide to the district notice that sets forth the reasons for its determination and the actions that the district must take to retain the delegated authority. Requires the district, within a specific time frame, to demonstrate its commitment and ability to take the actions set forth in the notice. Requires the authority, if the authority does not find that the district will adequately enforce its rules or orders, to resume full responsibility for implementing and enforcement of those rules and orders. Requires the authority to provide to the district notice that the delegation of authority to it has been terminated. Provides that after the termination notice is given, that authority of the district to manage or control water in the aquifer is limited to the authority granted by Subsection (b).

**SECTION 1.43. CREATION OF UNDERGROUND WATER CONSERVATION DISTRICT.** Authorizes an underground water conservation district to be created in any county affected by this article as provided by Chapter 52B, Water Code.

**SECTION 1.44. COOPERATIVE CONTRACTS FOR ARTIFICIAL RECHARGE.** (a) Authorizes the authority to contract with any political subdivision of the state under Chapter 791, Government Code, to provide for the artificial recharge of the aquifer, through injection wells or with surface water subject to the control of the political subdivision, for the subsequent retrieval of the water by the political subdivision or its authorized assignees for beneficial use within the authority.

(b) Prohibits the authority from unreasonably denying a request to enter into a cooperative contract under this section if the political subdivision agrees to file with the authority records of the injection or artificial recharge of the aquifer, and to provide for the protection of the quality of the aquifer water and of the rights of aquifer users in designating the location of the injection wells or recharge dams, the methods of injection or recharge, and the location and type of retrieval wells.

(c) Entitles the political subdivision causing artificial recharge of the aquifer to withdraw

during any 12-month period the measured amount of water actually injected or artificially recharged during the preceding 12-month period, as demonstrated and established by expert testimony, less an amount determined by the authority to account for that part of the artificially recharged water discharged through springs, and compensate the authority in lieu of user's fees.

(d) Provides that the amounts of water withdrawn under this section are not subject to the maximum total permitted withdrawals provided by Section 1.14.

**SECTION 1.45. RECHARGE DAMS.** (a) Authorizes the authority to build or operate recharge dams in the recharge area of the aquifer if the recharge is made to increase the yield of the aquifer and the recharge project does not impair senior water rights or vested riparian rights.

(b) Requires the commission to determine the historic yield of the floodwater to the Nueces River basin. Provides that the historic yield is the lesser of the average annual yield for the period from 1950 to 1987, or the annual yield for 1987.

(c) Authorizes only the amount of floodwater in excess of the historic yield as determined by the commission to be impounded by a recharge dam built or operated under this section.

## ARTICLE 2

**SECTION 2.01. DEFINITION.** Defines "district."

**SECTION 2.02. VALIDATION.** Validates the creation of the district and the actions of the board of directors.

**SECTION 2.03. BOUNDARIES.** Provides that the boundaries of the district are contained within the boundaries of Uvalde County.

**SECTION 2.04. FINDING OF BENEFIT.** Provides that all land and other property included within the district will be benefitted by the validation of the district.

**SECTION 2.05. POWERS.** (a) Provides that the district has all of the powers and duties provided by general law. Provides that this article prevails over any provision of general law that is in conflict with or inconsistent with this article.

(b) Authorizes the district to develop and implement a drought response plan.

(c) Subjects the rights and powers of the district to the continuing right of supervision of the state to be exercised by and through the Texas Water Commission.

**SECTION 2.06. LEVY OF TAXES.** Provides that the levy and collection of taxes is governed by Chapter 52H, Water Code, with an exception.

**SECTION 2.07. PENDING LITIGATION.** Provides that this article does not apply to or affect litigation pending on the effective date of this article in any court of competent jurisdiction to which the district is a party.

## ARTICLE 3

**SECTION 3.01. LEGISLATIVE OVERSIGHT.** (a) Sets forth the compensation of the Edwards Aquifer Legislative Oversight Committee.

(b) Requires the committee to examine and report to the legislature on the effectiveness of the state and local government entities in meeting the purposes of the authority.

(c) Requires the board to continually oversee and review certain activities relating to the management of the Edwards Aquifer.

**SECTION 3.02. NOTICE OF AVAILABLE WATER.** Requires the Texas Natural Resources Conservation Commission to notify the authority of any water available for appropriation in the Guadalupe-Blanco River Basin as the commission discovers the available water.

**SECTION 3.03. SUNSET COMMISSION REVIEW OF GUADALUPE-BLANCO RIVER AUTHORITY.** (a) Subjects the board of directors of the Guadalupe-Blanco River Authority to review under Chapter 325, Government Code, but prohibits that authority from being abolished under that Act. Requires the review to be conducted as if the board of directors were scheduled to be abolished September 1, 1995.

(b) Provides that the terms of the board members expire September 1, 1995, unless after the review the legislature continues the members of the board of directors in office.

(c) Requires a new board of directors, if the terms of the board of directors expire under Subsection (b), to be appointed and confirmed. Sets forth dates to stagger the expiration of board member's terms. Provides that a member whose term expires under Subsection (b) is not eligible for reappointment under this subsection.

**SECTION 3.04. COOPERATION.** Requires all state and local governmental entities to cooperate with the authority to the maximum extent practicable so that the authority can best be able to accomplish the purposes set forth under Article 1. Requires the authority, on or before January 1, 1995, to submit a report to the governor, lieutenant governor, and speaker of the house evaluating the extent to which other entities have cooperated with and assisted the authority.

#### ARTICLE 4

**SECTION 4.01. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS.** (a) Sets forth findings related to procedural requirements. Provides that all requirements relating to the passage of this Act are fulfilled and accomplished.

**SECTION 4.02. EFFECTIVE DATES.** Effective date: September 1, 1993, except Section 1.35 takes effect March 1, 1994.

**SECTION 4.03. EMERGENCY.** Emergency clause.